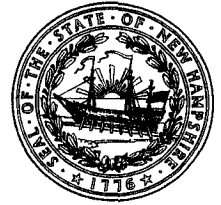




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

July 11, 2005

Joseph N. Cioffi  
PO Box 900  
Enfield, NH 03748

Re: Docket No. AF 04-063 Motion to Accept Settlement Agreement

Dear Mr. Cioffi:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on July 7, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Clafani,  
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Lynn Woodard, DES WMD  
Tom Beaulieu, DES WMD  
Susan Hanamoto, DES WMD

Joseph N. Cioffi  
P.O. Box 900  
Enfield, NH 03748

**ADMINISTRATIVE FINE  
No. AF 04-063**

Re: K-J's Variety, 322 Sunapee Street, Newport, NH  
UST ID#0-113921

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Joseph N. Cioffi parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Joseph N. Cioffi is the registered facility owner of one underground storage tank ("UST") at the K-J's Variety facility ("the Facility"), further identified as UST # 0-113921, located on real property at 322 Sunapee Street, Newport, NH ("the Property").
3. On September 7, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-063 ("the Notice") to Joseph N. Cioffi seeking fines totaling \$500 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice cited Joseph N. Cioffi for violating Env-Wm 1401.17(a) and (b) by failing to properly temporarily close the UST. Pursuant to Env-C 607.06(d) the Division sought a fine of \$500.
5. In order to settle this matter, the Division and Joseph N. Cioffi have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
6. Of the proposed fine, in the amount of \$500, 20% or \$100 shall be suspended due to Joseph N. Cioffi's history of compliance at this facility. An additional 20% or \$100 shall be suspended due to the Facility's small business status. An additional 20% or \$100 shall be suspended due to Joseph N. Cioffi's cooperation in returning the facility into compliance.
7. The suspended portion of the proposed fine, in the amount of \$300 is contingent upon Joseph N. Cioffi maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Joseph N. Cioffi fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$300 shall become due and payable immediately. If Joseph N. Cioffi maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

8. Joseph N. Cioffi agrees to pay the remaining \$200 upon execution of this Agreement by Joseph N. Cioffi.

9. Payment under Paragraph # 8 and any payment that becomes due pursuant to Paragraph #7 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, Joseph N. Cioffi waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

12. The effective date of this Agreement will be the date on which it is signed by Joseph N. Cioffi, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

7-1-05  
Date

  
Joseph N. Croffi, Owner

7/7/05  
Date

DES Waste Management Division  
  
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 7<sup>th</sup> day of July, 2005.

  
Michael P. Nolan, Commissioner  
Department of Environmental Services